

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JASON C. MILLS,)	
)	
Petitioner,)	
)	
v.)	Civ.Act.No. 06-563-SLR
)	
THOMAS CARROLL , Warden)	
and JOSEPH R. BIDEN III , Attorney)	
General for the State of Delaware)	
)	
Respondents. ¹)	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Jason C. Mills, has applied for federal habeas relief, challenging his 2005 conviction by a Delaware Superior Court jury of criminal impersonation and possession of a firearm and ammunition by a person prohibited. D.I. 1. By the terms of the Court's order, the answer is due to be filed on January 19, 2007.

2. Counsel assigned to this case, Elizabeth R. McFarlan, has been ill within the last week and has been unable to complete the response by January 19, 2007. It is unknown when Ms. McFarlan will be well enough to return to the office. Further, counsel has been, and continues to be, diligently working on numerous cases before this Court. Counsel has a case scheduled for argument before the Third Circuit Court of Appeals on February 1, 2007. Due to the two vacancies currently in the Appeals

¹ See Fed.R.Civ.P. 25(d)(1). Attorney General Joseph R. Biden III, assumed office on January 2, 2007, replacing former Attorney General Carl C. Danberg, an original party to this case.

Division, the workload for the remaining attorneys has greatly increased. Counsel is doing her best to prioritize cases by date received. Support staff has also been out due to illness and a death in her family within the last week and has been unable to assist in the filing of other matters. Finally, the Chief of the Appeals Division must review all filings prior to submission and has been unable to do so because he has been in trial. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' SECOND request for an extension of time in this case.

5. Respondents submit that an extension of time to and including February 9, 2007, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ James T. Wakley
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 4612

DATE: January 19, 2007

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ James T. Wakley
Deputy Attorney General

Counsel for Respondents

Date: January 19, 2007

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2007, I electronically filed the attached documents with the Clerk of Court using CM/ECF. I also hereby certify that on January 19, 2007, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Jason C. Mills
SBI No. 367691
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ James T. Wakley
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 4612
james.wakley@state.de.us

Date: January 19, 2007

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THOMAS CARROLL, Warden
and **JOSEPH R. BIDEN, III**, Attorney
General for the State of Delaware

Respondents.

ORDER

This ____ day of _____, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made
and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before February 9, 2007.

United States District Judge